

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

FREEDOM FROM RELIGION FOUNDATION, INC.,

Plaintiff,

v.

Case No.: 08-CV-1105

MANITOWOC COUNTY, WISCONSIN
BOB ZIEGELBAUER, Manitowoc County Executive,
And JEFFREY BEYER, Manitowoc County
Public Works Director,

Defendants.

DECLARATION OF REBECCA S. KRATZ

Rebecca S. Kratz declares, pursuant to 28 U.S.C. §1746, as follows:

1. I am I am the Staff Attorney at the Freedom From Religion Foundation, Inc. in Madison, WI. I am the attorney for the plaintiff in this case. I make this declaration based on my personal knowledge.
2. This declaration is submitted in support of the Motions to Modify the Scheduling Order and for Leave to File a Supplemental Complaint to which this declaration is attached.
3. The original complaint in this matter, filed on December 17, 2008, demanded judgment against the defendant for a declaration that the actions of the

defendants violate the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. §1983; for an order enjoining the defendants from promoting, advancing, or endorsing the establishment of religion by public displays of religious symbols that give the appearance of government sponsorship of religion; for judgment awarding such further relief as the Court deems just and equitable; and for judgment awarding the plaintiff its reasonable costs, disbursements and attorneys fees as allowed by law, pursuant to 42 U.S.C. §1988.

4. Plaintiff has not amended or supplemented its original complaint.
5. On September 30, 2009, plaintiff Freedom From Religion Foundation moved for summary judgment in this action, based on the pleadings, the initial disclosures and discovery and the declarations of Annie Laurie Gaylor, Paul T. Rappel, and Rebecca S. Kratz.
6. On October 1, 2009, defendants moved for summary judgment in this action, based on the pleadings, the initial disclosures, and the affidavits of Manitowoc County Executive Bob Ziegelbauer, Manitowoc County Public Works Director Jeffery Beyer, and Attorney Remzy Bitar.
7. Attached to Manitowoc County Executive Bob Ziegelbauer's affidavit as Exhibit B, were newly adopted "Policies and Procedures for Courthouse Grounds Use." Attached hereto as Exhibit A are the resolution and policies and procedures adopted by the Manitowoc County Board on September 22, 2009, and received by the Manitowoc County Clerk on September 25, 2009.

8. Despite defendants' obligation to supplement requests for production of documents under Fed. R. Civ. P. 26, the plaintiff was not made aware of the new Policies and Procedures regarding the Courthouse exterior until the defendants' motion for summary judgment and supporting documents were filed with this Court on October 1, 2009, and reviewed by plaintiff's counsel on October 2, 2009.
9. As a result of this omission from discovery, the plaintiff was unable to address the constitutionality of this policy in its motion for summary judgment and supporting brief. Given that the new policies and procedures were also adopted after the date of the initial pleading, the plaintiff was also unable to address the constitutionality of these policies and procedures in the original complaint filed at the end of last year.
10. Thus, the amended or supplemental complaint seeks a declaration by this Court that the newly adopted policies and procedures governing use of the Courthouse grounds are, as written, unconstitutional.
11. Any delay in seeking permission from this Court to amend or supplement the complaint in this action is not due to the plaintiff's inaction or omission, but rather is a direct result of the defendants' failure to promptly inform the plaintiffs of the new policies and procedures from the Manitowoc County Board.
12. Granting leave to amend or supplement the complaint will not result in undue prejudice to the defendants in its ability to defend on the merits because the claims of the amended or supplemental complaint arise out of the same transaction and facts and circumstances as set forth in the original complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 12, 2009.

/s/ Rebecca S. Kratz

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